

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

REGINALD WILSON,	:	APPEAL NO. C-090314
	:	TRIAL NO. 07CV-12085
Plaintiff-Appellant,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
AMBER JENNINGS,	:	
	:	
Defendant,	:	
and	:	
	:	
NATIONWIDE MUTUAL	:	
INSURANCE COMPANY,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Reginald Wilson appeals from the trial court's entry granting summary judgment to defendant-appellee Nationwide Mutual Insurance Company on his supplemental complaint in which he had sought, pursuant to R.C. 3929.06, to recover insurance proceeds to satisfy a default judgment he had obtained against defendant Amber Jennings. On appeal, he raises a sole assignment of error,

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

in which he argues that the trial court erred in granting summary judgment to Nationwide.

Wilson was involved in an auto accident with Jennings. At the time of the accident, Jennings was driving an automobile owned by Jeffrey Henderson. Wilson subsequently filed suit against both Jennings and Henderson for personal injuries he had sustained in the auto accident. He alleged that Jennings had negligently operated the vehicle and that Henderson had negligently entrusted the vehicle to Jennings.

Henderson subsequently moved for summary judgment on the negligent-entrustment claim. Attached to his motion was an affidavit stating that he had not given Jennings permission to use the vehicle at the time of the accident. Pursuant to Civ.R.56(F), Wilson sought and received additional time to conduct discovery before responding to Henderson's motion for summary judgment. In his response, Wilson argued that Henderson had given permission to his daughter Tiffany Henderson to operate the vehicle, and that Tiffany had been negligent in entrusting the vehicle to Jennings. Wilson, however, failed to depose either Tiffany or Jennings to determine whether his argument had merit. As a result, the trial court granted summary judgment to Henderson on the negligent-entrustment claim.

Around the same time, Wilson also moved for a default judgment against Jennings. The trial court granted the motion and awarded Wilson \$15,000, plus interest and court costs. Those judgments were never appealed.

Wilson then filed a supplemental complaint pursuant to R.C. 3929.06 against Jennings and Henderson's insurer, Nationwide. Wilson sought a declaration that Jennings was an insured under the terms of Henderson's policy with Nationwide. He

also sought a judgment against Nationwide for the amount of the default judgment entered against Jennings.

Nationwide moved for summary judgment. It argued that because Jennings was not a resident relative of Henderson, the only way she could qualify as an insured under the policy was if she had been using Henderson's vehicle with his permission. Nationwide further argued that because the trial court had already held that there was no evidence that Henderson had given Jennings permission to operate the vehicle on the date of the accident, the doctrine of collateral estoppel precluded Wilson from relitigating this issue in his supplemental complaint. The trial court agreed and granted summary judgment to Nationwide.

"Summary judgment is appropriate where there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and the evidence demonstrates that reasonable minds can come to but one conclusion and that conclusion is adverse to the party opposing the motion. We review the entry of summary judgment as a matter of law under a de novo standard."² Wilson contends that the trial court erred when it applied the collateral-estoppel doctrine to bar his claims against Nationwide.

Collateral estoppel precludes the relitigation of an issue that has been "actually and necessarily litigated and determined in a prior action which was based on a different cause of action."³ Collateral estoppel applies when (1) the party against whom estoppel is sought was a party or in privity with a party to the prior action; (2) there was a final judgment on the merits in the previous case after a full and fair

² *Morton v. Continental Casualty Co.*, 1st Dist. Nos. C-030771 and C-030799, 2004-Ohio-7126, at ¶6.

³ *Goodson v. McDonough Power Equip. Inc.* (1983), 2 Ohio St.3d 193, 443 N.E.2d 978.

opportunity to litigate the issue; (3) the issue was admitted or actually tried and decided and was necessary to the final judgment; and (4) the issue decided in the prior action is identical to the issue in the pending suit.⁴ Issues are identical where they rest upon the same facts and are supported by the same proof.⁵

Wilson does not dispute that the first two elements of collateral estoppel were met in this case. Rather, he argues that the third and fourth elements were not met because his supplemental complaint involved the issue of insurance coverage, not the tort of negligent entrustment. But Wilson has confused issue preclusion (collateral estoppel) with claim preclusion (*res judicata*). Collateral estoppel applies with equal force regardless of whether the second action involves the same claim or a different claim.⁶ Here, the only way Wilson could have recovered damages under the insurance policy was to show that Jennings had Henderson's permission to operate the vehicle. The trial court, however, had already decided that issue when it granted summary judgment in favor of Henderson on the negligent-entrustment claim.

Wilson also argues that summary judgment was improvidently granted because there was a genuine issue of material fact as to whether Jessica had given Jennings the authority to operate the vehicle. But Wilson raised this argument in response to Henderson's motion for summary judgment and failed to present any substantiating evidence. Even after filing his supplemental complaint, Wilson failed to depose Tiffany or Jennings. He only deposed Jeffrey Henderson. Henderson

⁴ *Michell v. Internatl. Flavors & Fragrances, Inc.*, 1st Dist. Nos. C-070530 and C-070549, 2008-Ohio-3697, at ¶14.

⁵ *Monahan v. Eagle Picher Industries, Inc.* (1984), 21 Ohio App.3d 179, 181, 486 N.E.2d 1165.

⁶ *Duskin v. Doe*, 1st Dist. No. C-010626, 2002-Ohio-2348; *Ft. Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.* (1998), 81 Ohio St.3d 392, 395, 692 N.E.2d 140.

specifically stated that Jennings did not have his permission to use the vehicle at the time of the accident. Collateral estoppel precluded Wilson from relitigating this issue.⁷ As a result, Nationwide was entitled to summary judgment on the supplemental complaint. We, therefore, overrule the sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 16, 2009
per order of the Court _____.
Presiding Judge

⁷ See, e.g., *Howell v. Richardson* (1989), 45 Ohio St.3d 365, 544 N.E.2d 878 (holding that the doctrine of collateral estoppel precludes a party from litigating factual issues from the underlying tort action in a supplemental petition under R.C. 3929.06).